

Award No. 14716

Docket No. 24318

FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

39 South LaSalle St., Chicago 3, Illinois

The First Division consisted of Engineers-Firemen Supplemental Board members and in addition Referee Ernest M. Tipton when award was rendered.

PARTIES TO DISPUTE:

**BROTHERHOOD OF LOCOMOTIVE FIREMEN AND
ENGINEMEN**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of Fireman C. V. Gates, Coast Division, for 496 deadhead passenger miles, San Luis Obispo to San Francisco and return, January 31, 1946.

EMPLOYES' STATEMENT OF FACTS: At approximately 10:00 A. M., January 29, 1946, Trainmaster C. E. Jones, San Luis Obispo, telephoned Fireman C. V. Gates at his home in San Luis Obispo and informed him that Superintendent J. J. Jordan had just telephoned from his office in San Francisco, saying that he had written a letter to Mr. Gates that date asking him to be present at a conference on Speed Circuit Signals in his office in San Francisco, 10:00 A. M., Thursday, January 31, 1946. Mr. Jones stated that he was telephoning Mr. Gates at Mr. Jordan's request, because Mr. Jordan doubted that his letter would reach Mr. Gates in time for him to attend the conference.

Mr. Gates informed Mr. Jones that his local organization had not authorized him to attend any conference or to handle any grievances with the Southern Pacific Company in connection with Speed Circuit Signals, and that he could not represent the Firemen's local organization at that conference. He further informed Mr. Jones that he would not go to the conference unless the Southern Pacific Company would assume the cost. Mr. Jones stated that he would again telephone Mr. Jordan's office for the purpose of determining if the Carrier would assume the expenses.

As Fireman Gates was reporting for duty at the roundhouse at San Luis Obispo for helper service at 12:20 P. M. the same day, Mr. Jones telephoned Mr. Gates informing him to go to the conference and that the question of pay would be taken care of there. Mr. Gates deadheaded to San Francisco on train No. 69, reported for the conference at 10:00 A. M., January 31, 1946, and remained in the conference until 1:40 P. M. that day. He then deadheaded back to San Luis Obispo on train No. 70, departing San Francisco at 6:30 P. M. and arriving San Luis Obispo at 1:20 A. M., February 1, 1946.

On February 4, 1946, Mr. Gates received the following letter from Superintendent J. J. Jordan:

“San Francisco, California
January 29th, 1946
File 31594

Mr. L. W. Kemble,
Local Chairman, BRT,
727 Islay Street,
San Luis Obispo, Calif.

Mr. C. V. Gates,
Local Chairman, BLF&E,
1738 Johnson Avenue,
San Luis Obispo, Calif.

Mr. G. I. Beckwith,
Local Chairman, ORC,
231 Beebe Street,
San Luis Obispo, Calif.
Gentlemen:

Mr. C. K. Tisdale,
Local Chairman, BLE,
1672 Fairview Avenue,
San Luis Obispo, Calif.

Will you kindly arrange to attend conference in my office, 10:00 A. M., Thursday, January 31st, to discuss speed control signaling devices?

Yours truly,

(Signed) J. J. Jordan,
Superintendent,

SOUTHERN PACIFIC COMPANY.”

There was no dispute between the Firemen's Organization and the Southern Pacific Company involving speed circuit signals, and Mr. Gates had no occasion to place this matter before his organization for approval in accordance with the by-laws of such organization. He attended the conference in the capacity of a fireman, and so informed Mr. Jordan at the conference.

Claim was made for 496 miles at deadhead passenger rate of pay, and one court day and expenses involved attending the conference.

Claim was changed by the BLF&E General Chairman to 496 deadhead passenger miles.

Claim denied.

POSITION OF EMPLOYES: This claim is based on the provisions of Article 31, Section 1, SP Firemen's Agreement, which provides for the compensation to be allowed firemen when deadheading on company business, and reads as follows:

“Firemen deadheading on Company's business on passenger trains will be paid for the actual mileage at 6.30 cents per mile and for deadheading on other trains at 6.94 cents per mile; provided that a minimum day at the above rates will be paid for the deadhead trip, if no other service is performed within 24 hours from the time called to deadhead. Deadheading resulting from the exercise of seniority rights or in the regulation of mileage under Article 43, Section 4, will not be paid for.”

The Board will note that the meeting was called to convene in Superintendent Jordan's office in San Francisco, 10:00 A. M., January 31, 1946, at the instance of the Carrier, concerning a subject alien to the provisions of the SP Firemen's Agreement and the Railway Labor Act. Although Fireman Gates made every reasonable effort to inform the Carrier that he would not attend the meeting as a committeeman, he was subsequently instructed

by Trainmaster Jones to attend. That this method of getting the desired men to attend the meeting was employed is substantiated by letter dated June 21, 1948, from O.R.C. Local Chairman G. I. Beckwith, presented herewith as Employes' Exhibit 1.

It is the position of the Employes that firemen, whether committeemen or not, instructed to attend a meeting with officials of the Carrier to discuss operating conditions, are called to do so at the instance of the Carrier and, when required to deadhead to attend such meeting, as in the instant case, should be compensated for deadhead service going to and from the meeting.

The Employes respectfully request that the claim as presented in Statement of Claim be sustained.

CARRIER'S STATEMENT OF FACTS: Under date of January 29, 1946, the superintendent of the carrier's Coast Division, addressed the following letter to local chairmen, BRT, ORC, BLF&E and BofLE:

"Gentlemen: Will you kindly arrange to attend conference in my office, 10:00 A.M., Thursday, January 31st, to discuss speed control signaling devices?"

Mr. C. V. Gates, Local Chairman, BLF&E, Surf Lodge No. 672 at San Luis Obispo, one of the designated local representatives of employes covered by the current agreement covering firemen, attended the conference in the superintendent's office at San Francisco during the period from 10:00 A.M. to 1:40 P.M., January 31, 1946.

Claim is made in behalf of Mr. Gates for 496 deadhead miles, San Luis Obispo to San Francisco and return, January 31, 1946, at rate of pay applicable to firemen deadheading on passenger trains.

POSITION OF CARRIER: The issue involved in this docket arises as result of contentions advanced by petitioner's representative, that the provisions of Section 1, Article 31, of the current agreement covering firemen, a rule pertaining to firemen "deadheading on Company business," are applicable in situations of the nature set forth in the carrier's statement of facts, and that under the terms of said agreement provision the claimant is entitled to payment for the distance allegedly traveled on passenger trains from San Luis Obispo to San Francisco and return, January 31, 1946.

Section 1, Article 31, of the current agreement covering firemen, in its entirety, is as follows:

"Sec. 1. Firemen deadheading on Company's business on passenger trains will be paid for the actual mileage at 4.82 cents per mile for deadheading on other trains at 5.46 cents per mile; provided that a minimum day at the above rates will be paid for the deadhead trip, if no other service is performed within 24 hours from the time called to deadhead. Deadheading resulting from the exercise of seniority rights or in the regulation of mileage under Article 43, Section 4, will not be paid for.

Question (a): In case where firemen, cut off working list, transferred from one seniority district to another for temporary service, is he entitled to time deadheading to or from division to which transferred or for time learning the road?

(b): In case where fireman is taken from working list and transferred from one seniority district to another for temporary service, is he entitled to time deadheading to or from division to which transferred and for time learning the road?

Answer (a): No.
(b): Yes.

Question: In case where extra list is reduced under Article 43, Section 8, and one or more of men cut off list is holding assignment or filling vacancy at outside point, is the man, or men, deadheaded out to furnish relief, entitled to payment for deadheading?

Decision: Yes; however, if it is known that men cut off list will return to terminal within four days from 12:01 A. M., date list is cut, no relief will be furnished, and man cut off will continue in service until return to terminal.

Question: Is fireman entitled to compensation for deadhead trip from outside point to terminal when run to which he was assigned is cancelled?

Answer: Yes.

Question: Is fireman assigned to a run as provided in Section 8, Article 39, account no bids having been received, entitled to deadhead compensation?

Answer: Yes."

The purpose of the conference that was held by carrier's superintendent in his office at San Francisco, on January 31, 1946, was to discuss various features in connection with a proposed installation of certain speed control signalling devices. The subject matter was one of mutual interest to the carrier and its several classes of operating employes; therefore, the superintendent requested the local chairmen in their official capacity representing the several classes of operating employes, including the claimant in his official capacity as local chairman representing firemen, to be present at the conference for discussion of the matter. The claimant, together with the other local chairmen referred to, was in attendance at the conference during the period from 10:00 A. M. to 1:40 P. M., January 31, 1946.

The intent and the purpose of Section 1, Article 31, of the current agreement covering firemen, insofar as that rule applies to "deadheading on Company business," is to provide a method for payment to firemen in those instances when they are required to deadhead from one point to another point in connection with the performance of work as firemen relating to the movement of trains; this to include (a) such necessary deadheading when taken from working lists and transferred from one seniority district to another for temporary service as fireman; (b) deadheading from terminal to outside points to fill vacancies on runs as result of extra lists being reduced; (c) return deadhead movements from runs at outside points to terminals when such runs are cancelled; and (d) deadheading when assigned to runs account bids not received therefor. It should be observed that the claimant was not "deadheaded" from San Luis Obispo to San Francisco and return on January 31, 1946, for any of those reasons.

Section 1, Article 31, was expressly designed by its framers to cover those deadhead movements that are necessary in connection with the movement of trains; said agreement provision, by its plain terms, was not intended to provide for, much less comprehend, payments for trips made by local chairmen, or other individuals representing the class of firemen, concerning matters of the nature involved in this docket, or in fact, for trips that may be necessary in respect to other reciprocal matters. Moreover, that rule has never at any time in the past been so construed or applied.

In the circumstances described herein, the carrier submits that Section 1, Article 31, supra, which is indicated by its plain terms applies to firemen "deadheading on Company business," can have no application, and that no valid basis exists thereunder for the payment requested in this docket in behalf of the claimant.

The issue involved in the instant docket, as it relates to the question of whether rules similar to Section 1, Article 31 of the current agreement are

applicable to incidental business, or services, is not one of first impression insofar as this Division is concerned, for the reason that such issue was involved in Award Nos. 1790, 2512, 3162, 4093, 4886, 5535, 9346 and 9544 of this Division. Representative of the construction which the Division has placed upon rules covering deadheading on Company business, is the following portions of its findings in Awards Nos. 1790 and 9544:

Award No. 1790

“... an examination of the whole of Rule 24 lends strong support to the contention of the Carrier that the term company's business refers to the movements of train and not to incidental services...”

Award No. 9544

“Furthermore, this Division has, apparently looked with favor on the contention that the words ‘Company business,’ used in connection with ‘deadheading’ means movement of trains or other operating problems, and not incidental business...”

It is significant that Section 24-2, Rule 24, of the rule cited by the petitioning organization in Award No. 1790, and upon which the claim for additional deadhead compensation was claimed, is a deadhead rule similar in all respects to Section 1, Article 31, of the current agreement upon which petitioner bases the claim in this docket; also that Article 19, the rule cited and relied upon to support the payment of deadhead compensation in Award No. 9544, specifically refers to “deadheading on Company business.”

The carrier asserts that nothing contained in Section 1, Article 31, of the current agreement covering firemen, or any other provision of said agreement, either specifically or by implication, provides for or contemplates payment of deadhead compensation under the circumstances present in this case; therefore, in consideration of the principle enunciated and recognized by the Division in the above-mentioned awards, it should be determined that no proper basis exists for the payment claimed, and said claim should be declined.

EMPLOYEES' REBUTTAL TO POSITION OF CARRIER: The Board will note there are no basic differences between the statement of facts as presented by the Employes and the statement of facts presented by the Carrier, the Carrier merely failing to show the details leading up to claimant's attending the meeting and that the Superintendent's letter, addressed to Local Chairmen, BLE, ORC, BLF&E and BRT, was not received by the claimant until after he had attended the meeting. Had claimant known he was not to receive compensation, he would not have attended the meeting, as there was no dispute to be settled regarding the speed control signaling devices, the meeting having been called at the instance of the Superintendent solely on a matter concerning the movement of trains.

The Board will recognize that these speed control signaling devices are appurtenances used in connection with the movement of trains and any meetings in relation thereto would of necessity pertain to the movement of trains. Therefore, the claimant having been instructed by the representatives of the Carrier to attend a meeting with respect to the movement of trains, and having had to deadhead to attend said meeting, did so at the instance of the Carrier on company business.

The Carrier refers to Awards Nos. 1790, 2512, 3162, 4093, 4886, 5535, 9346 and 9544 of your Division. The Board will note that the factual circumstances upon which the claims in those awards were predicated contain no analogy to the factual circumstances in the instant claim, in that the petitioning claimants in those awards were required to deadhead to either

attend a court of law or an investigation involving the individual, whereas the claimant in the instant case was required to deadhead regarding a condition affecting the movement of trains.

As Article 31, Section 1, SP Firemen's Agreement, specifically provides for deadhead compensation under the circumstances present in this case, the Employees again request the Board to sustain the claim as presented in Statement of Claim.

* * * * *

All data herein submitted have been presented to the duly authorized representative of the Employees and Carrier and are made a part of the particular question in dispute.

Oral hearing is not desired.

(Exhibits not reproduced.)

FINDINGS: The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived hearing thereon.

The claimant was local chairman of B.L.F.&E. at San Luis Obispo. He and other local chairmen were directed to attend a meeting on January 31, 1946, at the superintendent's office in San Francisco, to discuss speed control signal devices.

This claim is for deadhead pay from San Luis Obispo to San Francisco and return. It is based upon Article 31, Section 1, of the Firemen's agreement, which provides in substance, that firemen deadheading on company's business will be paid the actual mileage traveled.

The carrier contends that this claimant was not deadheading on company's business at the time in question, but was attending a "safety meeting" which was mutually beneficial to both the carrier and men operating trains, and does not come within the deadhead rule.

This referee has been cited many awards by both the employes and the carrier but does not find any of them exactly in point; either the rules of the applicable agreement are different or the facts are different.

In construing a contract, it is a cardinal rule of construction to construe the contract as a whole, giving every paragraph, sentence, phrase, or word a meaning, if possible. In construing the current agreement under this rule of construction we are forced to the conclusion that the claim cannot be sustained under the deadhead rule. This for the reason, Article 33, section 1, provides that firemen ordered to attend "safety meeting" shall be paid necessary expenses when away from home terminal and, also, not less than they would have earned had they been used in regular turn.

There can be no doubt that this specific rule in regard to attending "safety meeting" shows that the deadhead rule does not apply under the facts in this record, but this claimant should have been paid under Article 33, section 1. For these reasons, the claim should be remanded to the parties.

AWARD

Claim remanded.

BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

ATTEST: (Sgd.) J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 10th day of August, 1951.

DISSENT TO AWARD NO. 14716, DOCKET NO. 24318

DISSENT OF CARRIER MEMBERS

This award presents a conspicuous example of this referee's apparent inability to understand and exercise his lawful functions under the statute. Here the referee not only undertakes to pass upon a dispute not before him; he even seeks to revive a claim that has been formally withdrawn and is now barred by agreement from being again asserted.

The claim in this docket, as originally presented, was for "496 miles at deadhead passenger rate and one court day expenses involved attending the conference." However, as expressly set forth in the employes' Statement of Facts, the "claim was changed" by the claimant's General Chairman to "496 deadhead passenger miles" based upon the deadhead provision (Art. 31, Sec. 1); i.e., the claim for a court day and expenses (under Art. 33, Sec. 1 of the agreement) was abandoned and withdrawn.

The referee now concludes, correctly but with apparent reluctance, that the claim for deadhead miles is not valid under the agreement; and then adds the wholly gratuitous comment that "this claimant should have been paid under Art. 33, Section 1"; i.e., for having attended a "safety meeting" under order of the company. In line with this comment, the referee states that the claim should be remanded to the parties, and a remanding award has been adopted accordingly by the majority.

Under the governing provisions of the statute, this action is clearly in excess of the Division's jurisdiction and therefore void. That jurisdiction is limited (by Section 3, First, (i) of the Act) to those disputes which are duly referred to the Division. The only dispute so referred in this docket related to "496 deadhead passenger miles." No dispute was referred here, and none legally existed at the date of this award, relating to "a day's pay and expenses" under Article 33, Section 1 of the agreement.

The limitation of the Division's jurisdiction to the disputes presented to it, and perforce its lack of lawful authority to create a dispute or render a ruling upon an issue not before it, have often been recognized and stated. Compare, in particular, Awards Nos. 13258 and 14458. In Award No. 13258, Referee Munro stated:

"It is not the function of this division to plead a claim or upon hearing thereof to amend the same. The Division must upon hearing determine whether a cause of action is or is not before it for decision."

In Award No. 14458, Referee Whiting stated:

"Thus it appears that such matter is not placed in issue before us by this docket."

Other awards to the same effect were cited to the referee.

Even if the purported remand were a lawful exercise of our authority, it would still serve no useful purpose. The claim for payment under Article 33 (1) was withdrawn and abandoned some time prior to March 12, 1949, the date shown on the employes' reply to the Carrier's Position. Under the National Agreement of August 11, 1948, this claim is wholly barred. This Division cannot revoke, amend or avoid that agreement, and by its own mere fiat revive a claim that has been withdrawn and abandoned more than two years past.

The only purpose achieved by the attempted remand is to give claimant and his organization an ostensible basis upon which to argue for some payment, despite their earlier withdrawal of the claim; and perhaps an excuse for placing the demand on a grand-officer docket, or even a strike ballot, if payment is declined. Thus this legally invalid award, like many another gratuitous expression, may serve merely to create or prolong disputes, and to defeat rather than promote "the prompt and orderly settlement" intended by the statute.

H. J. Hoglund
Burton Mason

September 18, 1951.

AWARD NO. 14716, DOCKET NO. 24318

SUSTAINING OPINION

The dissent does not challenge, even by inference, the soundness of the conclusion reached here. The dissent presents the ludicrous spectacle of lecturing a Supreme Court Justice on his "inability to understand and exercise his lawful functions under the statute." In our opinion, the irresponsible harangue stems from the author of the dissent's unwillingness or inability to comprehend the function of an adjustment board and the intent and purpose of the Congress of the United States in enacting Section 3 First of the Railway Labor Act, as amended. Since its inception, the First Division has held consistently and unanimously that the schedules are always in evidence. For example, see Award No. 13230. The function of the First Division (as understood and exercised without question, with and without the aid of a referee, since its establishment) is to decide the issue before it without regard to the narrow confines of a technical pleading at law. For example, see among many others, Awards No. 3141, 4418, 9927, 10138, 11668, 13295 and 14685.

How the encouragement of a "strike ballot" by the dissenting minority can be conducive to the "prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements" is indeed difficult to comprehend.

Don A. Miller
P. C. Southworth